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THE MISSOURI ELECTION.

SPEECH

OF

Honorable CHARLES UPSON,

OF MISSOURI,

Delivered in the House of Representatives,

First Session, Thirty-Eighth Congress,

Friday, May 6, 1864,

ON THE

CONTESTED ELECTION CASE OF BRUCE *vs.* LOAN,

FROM THE SEVENTH CONGRESSIONAL DISTRICT OF MISSOURI.

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On the Contested Election Case of Bruce *vs.* Loan, from the Seventh Congressional District of Missouri.

Mr. SPEAKER: In the present situation of our country the principles involved in this contested election assume an interest and importance far exceeding that of ordinary election contests. It is of the highest concern to loyal citizens in the border States to know whether in these times of civil commotion and rebellion, while civil war is raging in our country and treason is lurking in their midst, they can be allowed to provide for the safe and secure exercise of the elective franchise; whether they can be permitted under the authority of either the national or State government to protect themselves at the polls from rebel attack, intrusion, interference, or miscegenation, or whether they are to be compelled to place themselves wholly at the mercy or forbearance of disloyal men, and to allow rebels and rebel sympathizers who have hitherto failed to overcome them by a resort to the cartridge-box to take possession and control of the ballot-box, and either by violence prevent the holding of an election or by an unlawful and arbitrary or fraudulent exercise of the elective franchise make the elections subservient to the purposes of the rebellion.

A further interest attaches to this case from the fact that similar principles are more or less involved in the decision of several other contested-election cases, not only in Missouri but in other of the border States, modified in each instance by the peculiar facts in evidence, and hence the decision arrived at in the case under consideration becomes as a precedent a matter of still greater practical importance.

A rebel or a rebel sympathizer at the polls may be more dangerous than in the ranks of the enemy, and the existence of the Government should not be permitted to be imperiled by allowing him either by violence or by fraud to defeat an election or to participate during the continuance of this rebellion in the exercise of the elective franchise, nor should his vehement outcries against the presence of a loyal military guard at the polls entitle him to be considered either as a suffering martyr or as a sincere advocate for the freedom and purity of the ballot-box.

In this contested case of Bruce *vs.* Loan, from the seventh district of Missouri, five members of the Committee of Elections, being a majority thereof, have in their report come to the conclusion that neither the contestant nor the sitting member is entitled to a seat in this House, and consequently that it must be referred back again to the people to

hold a new election. The minority of the committee, however, consisting of four members, insist that a valid choice has been made, and that the sitting member is entitled to retain his seat. In this connection it may be proper to refer to the rule heretofore laid down in 1826 by the Committee of Elections in the case of Biddle and Richard *vs.* Wing, (Cl. and Hall, 506,) which report was subsequently acquiesced in by the House. It is as follows:

"In all cases of contested elections where the question depends upon matters of fact which are controverted by the parties, much difficulty is to be expected in coming to a decision; and, where there is room for doubts, a disposition is often felt to return it to the people.

"This, however, ought not to be done when it is possible to ascertain what the true result has been. The elective privilege is a very important one, and ought to be held in the highest estimation.

"When a people, in the exercise of their constitutional rights, have gone through with the process of an election, according to the prescribed rules, they ought not to be deprived of the advantages accruing therefrom but for the most substantial reasons. No doubts which are capable of being solved ought to be permitted to operate against them. Indeed, nothing short of the impossibility of ascertaining for whom the majority of votes has been given ought to vacate an election; more especially if, by such decision, the people must on account of their distant and dispersed situation necessarily be unrepresented for a long period of time."

This reasoning is as cogent and forcible now as it was then, and I have found in investigating the evidence in this case no good or sufficient reason for vacating the election and am satisfied that a valid choice has been made.

The condition of Missouri and the events transpiring there since the breaking out of the rebellion form a part of the history of the country and of the war, and this House will take notice thereof without further reference to the particulars. We merely mention in passing that the Missouri State convention in providing for the holding of the election in question, conscious of the presence of disloyal men in the State, prescribed by ordinance, June 10, 1862, an oath to be taken by all voters before they should be allowed to vote, and among other things required the voter to swear therein that since the 17th day of December, 1861, he had not wilfully taken up arms or levied war against the United States or against the provisional government of the State of Missouri. By General Order No. 24, issued by General Schofield August 4, 1862, which the report of the majority of the committee fails to notice, all the loyal men of Missouri subject to military duty were required to be organized into companies, regiments, and brigades, and all disloyal men and those who had at any time been rebel sympathizers were ordered to report themselves and be enrolled as such and to surrender their arms, and were to be permitted to remain at home so long as they should quietly attend to their ordinary and legitimate business and not in any way give aid or comfort to the enemy, and were not to be organized into companies nor required or permitted to do duty in the Missouri militia.

This Order, No. 24, should be carefully borne in mind, as it is frequently alluded to in the testimony. The burden of the allegation in contestant's notice in this case is the alleged violent interference with and intimidation of voters at the polls by the Missouri State militia, preventing voters, as contestant claims, from voting for him who would have voted for him but for such interference or intimidation, and some eight counties are specified in which such interference and intimidation are charged to have taken place, but no names are given of persons so interfering or interfered with or intimidated, and no election precincts are named where such interference is claimed to have taken place.

It is not claimed by the contestant that he received a majority or a plurality of the votes actually cast at said election, but he avers or insists that he would have received a majority or plurality of the said votes had not his friends been thus interfered with, intimidated, and prevented from voting.

A like allegation or claim was set up in the case of Biddle and Richard *vs.* Wing, heretofore referred to, and it was met and answered by the committee in their report, as follows:

"The committee are of opinion that the duty assigned to them does not impose on them an examination of the causes which may have prevented any candidate from getting a sufficient number of votes to entitle him to the seat. They consider that it is only required of them to ascertain who had the greatest number of legal votes actually given at the election. An election is the act of selecting, on the part of the electors, a person for an office of trust. The inspectors of election are constituted judges of the qualifications of electors, and exercise from necessity a discretionary power. If they err and reject a legal vote, or an elector from any cause should fail in presenting his vote for their reception, the nature of the case precludes it from entering into the consideration of the general result of the election, unless indeed corruption should appear sufficient to destroy all confidence in the purity and fairness of the whole proceeding. It is properly a question between these officers and the injured party; and the laws of the Territory in this case make ample provision for guarding the purity of the election, and for the punishment of offenses against the rights of the citizen in that respect. In case of the application of the contrary doctrine the greatest uncertainty must necessarily prevail; and should it be established, it would be placing in the hands of a few riotous individuals the power of defeating any election whatever.

"The law appoints a particular time and place for the expression of the public voice; when that time is past it is too late to inquire who did not vote, or the reason why.

"The only question now to be determined is for whom the greatest number of the legal votes have been given."

In the investigation of contested-election cases in England, before a parliamentary committee, when riotous interference or violence is alleged as a ground for setting aside or invalidating the election, the practice requires rigorous proof that the result of the election has been affected by riotous interruption or obstruction; and also when restraint or intimidation is set up, proof is required that an organized system of unlawful restraint or intimidation existed or was acted upon at the polls to prevent the freedom of election and to secure the defeat of the contestant.

Such a state of facts will hardly be claimed to be shown by the testimony taken in this case, nor is there any such rigorous proof of riotous or violent interference affecting the result of the election.

It has also been determined in the following contested-election cases, namely, Van Rensselaer *vs.* Van Allen, Lyman *vs.* Smith, Randolph *vs.* Jennings, and Bassett *vs.* Bayley, (Cl. and Hall, 73, 101, 240, and 254,) that where irregularities or illegalities were shown in the election in parts of a district affecting the votes cast, if it did not appear that a sufficient number were affected so as to change the result, the election would not be set aside, but the candidate who was shown to have received the majority or the greatest number of the legal votes would be held to have been elected.

Keeping in view these principles as applied to the investigation of contested elections, and also bearing in mind the allegations in contestant's notice in this case, let us proceed to the consideration of the facts which appear therein.

It is shown by the official returns that at the election in this seventh congressional district of Missouri, held on the 4th day of November, 1862, the whole number of votes cast was 13,803, of which Benjamin F. Loan, the sitting member, received 6,582; John P. Bruce, the contestant, received 4,554; and H. B. Branch received 2,665; one vote being given for S. A. Richardson, and one for R. M. Stewart. It thus appears that the majority or plurality of Loan, the sitting member, over Bruce, the contestant, is 2,028.

The seventh Congressional district of Missouri is composed of the counties of Buchanan, Andrew, Holt, Atchison, Nodaway, Worth, Gentry, Harrison, Mercer, Grundy, Putnam, Sullivan, Livingston, Daviess, and De Kalb, being in all fifteen counties, and the contestant while alleging in his notice interference and intimidation in only eight of these fifteen counties does not claim to have offered any evidence as to the election in but five of them, namely, Atchison, Livingston, Andrew, De Kalb, and Buchanan, and in most of these counties evidence only as to one election precinct.

As to ten of the counties in the district, therefore, no attempt is made to impeach the election, while as to the other five counties, with one slight exception, only one township in each is in reality referred to or in the least affected by the so-called testimony offered by the contestant.

This fact of itself is sufficient to show the weakness and insufficiency of contestant's testimony, and to authorize us at the outset to insist that the evidence is too restricted in its scope, in the ground it professes or attempts to cover, to enable the contestant to support his allegations, and that, even if he should succeed in showing interference or intimidation in all of those townships, it could not by possibility have changed the result. But it remains to be seen whether he has sustained his allegations in any one or more of these townships.

But one witness testifies as to the election in Atchison county, and this one only as to the Rockport precinct. He saw a guard of militia at the court-house, but did not go in or attempt to go in and vote, and consequently knew nothing of the manner in which the election was actually conducted; yet he goes on to relate what various individuals with whom he conversed said to him, and what remarks he heard persons make, and from what he heard said he ventures an opinion, as to the number of voters he thinks were prevented in that entire county from voting for contestant. And this is claimed as evidence for the contestant! There are eight election precincts in this county, and this veracious witness is the attorney or counsel employed by the contestant to procure evidence for him in this county, but failing to get any swears himself. Can such evidence be entitled to any serious consideration?

The aggregate vote for Congress in this county at this election was 675. The vote for judges in 1863 was only 633, being 42 less than in 1862, as is shown by the exhibits, while the aggregate vote of the county for President in 1860 was but 940, giving comparatively a very small margin of votes for the secession element which then existed there. It certainly cannot be insisted that there is any evidence to impeach the election in the county of Atchison.

As to the election in Livingston county, four witnesses testify in regard to one precinct in Chillicothe, and one as to Utica precinct, in Green township. From their testimony it would seem that a squad of Missouri soldiers commanded by a Lieutenant Colonel Jacobson, at Chillicothe, had some little difficulty on the morning of the election with a man named Hutchinson, at the polls, as to his voting, and also with the judges of election as to whether disloyal men should be allowed to vote, it being claimed that Hutchinson was disloyal; and the judges for a time, in consequence of Jacobson's conduct in this matter, refused to proceed with the election; and Jacobson caused Hutchinson to be taken out of the house. It further appears, however, that on telegraphing to Governor Gamble on the subject, he at once sent an order to Jacobson, and thereupon Jacobson and his men left; and the voting was resumed and went on without any other interruption, Hutchinson himself voting with the rest; and the whole delay did not exceed one hour. No person is shown to have been prevented from voting at this precinct.

As to the Utica precinct, it may be inferred from the testimony of the only witness produced that some soldiers from the twenty-seventh Missouri regiment, from Chillicothe, under Major Howe, came there in the morning as he said to guard the polls and see that no disloyal persons voted, and that the judges of election, on his so notifying them, consulted together and determined not to open the polls until they heard from Chillicothe. A reply was soon received from Chillicothe, and an order for Howe and his men to return, which they did, and the voting went on without interruption, the polls having been opened before the soldiers left. This was about noon.

But the witnesses called to show these facts are several of them far from being above suspicion. One of them, named John W. Garr, thus illustrates on cross-examination the nature of his loyalty:

"*Question.* Have you ever been a member of the militia of this county, and if not, for what reason?

"*Answer.* I have not. I got a certificate of exemption as a sympathizer with the rebellion."

The contestant still insisting on the soundness of the loyalty of his witness, thereupon re-examines him as follows:

"*Question.* Have you not always been for the Constitution as it is and the Union as it was, and a friend of the Government?

"*Answer.* I have always been a constitutional Union man, in favor of the old Constitution."

A sympathizer with the rebellion in Missouri is a "constitutional Union man!" I congratulate the honorable gentleman from New York, [Mr. BROOKS,] who prides himself on this floor as being a "constitutional Union man," that we have here in Missouri found a member of his party, and a local exposition of its principles and its loyalty.

The most that can be claimed, from the testimony as to Utica and one precinct in Chillicothe, in Livingston county, is that at each poll for an hour or so the judges of election, on account of some disagreement with the military officer temporarily there, refused or declined to go on with the election. Nothing of interference with or intimidation of voters is shown; but it is fairly to be inferred that the judges were unwilling that there should be any military guard at the polls, and therefore waited to telegraph to the Governor and have the soldiers ordered away before they would proceed with the election; and the Governor seems to have humored these punctilious gentlemen in this respect, and the soldiers, as good and loyal citizens, promptly obeyed.

But it is the height of absurdity to claim or insist that there was military interference with or intimation of voters in this county at this election to the prejudice of contestant. The testimony shows that there were seven election precincts in this county, and the witnesses only testify as to what occurred at two of these precincts, and at one of these—the Chillicothe precinct—the contestant received over three times as many votes as the sitting member, and in Greene, called also Utica, the other precinct, he received over six times as many votes as the sitting member did, and the official canvass shows that in this county of Livingston the contestant received more than twice the number of votes that were cast for General Loan, his opponent.

That this was originally a strong secession county, or has been much affected by the rebellion, is apparent from a comparison of the aggregate vote of different years. For President in 1860 it was 1,469; for Congress in 1862 it was 683; and for judges in 1863 963. Of this vote for President in 1860 20 votes were cast for Lincoln, 401 for Douglas, 578 for Bell, and 470 for Breckinridge. Is it strange, then, that since the war this secession element in this county has withdrawn some voters from the polls? Is the contestant anxious for their votes? If not, why this parade in the evidence and in the report of the majority of the committee of the vote of 1860 as a basis of comparison?

In Andrew county all of contestant's testimony is taken before the clerk of the circuit

court, without notice and without authority, and the written objection of the sitting member to the taking of the testimony before such person precedes the depositions. The said clerk also styles himself recorder of the county, but he is only recorder of deeds, and not a judicial officer, and is not authorized to take depositions in such cases, and the whole testimony is objected to by the sitting member, and is manifestly illegal and cannot be received in the case. There is therefore no testimony before this House as to this county, the act of 1851 being clear and explicit as to the persons who are authorized to take depositions in such cases, and on this ground alone we might rest the case, so far as the consideration of the election here is concerned.

But while insisting upon this fatal objection to the testimony, we will look at it for a moment to see what it discloses. We notice that it is wholly confined to one precinct, the Savannah precinct, notwithstanding that there are eight election precincts in the county. From the whole depositions it may be inferred that there was quite a crowd of citizens at and around the polls at Savannah and some noise and confusion; that a portion of the crowd was composed of men wearing the militia uniform, but that they were not soldiers on duty, and that there was no military guard at the polls. That a few persons found it difficult to vote by reason of the crowd, or were hindered in attempting to vote, some of them claiming that they were pushed back from the polls, and that, as they think, it was because they were opposed to the unconditional Union ticket. That numbers in the crowd expressed themselves as opposed to secessionists and to allowing them to vote, but that the judges of election allowed every man to vote who offered to, who was otherwise qualified and who would take the oath prescribed by the convention ordinance. It also appears that usually, at almost every general election there is quite a crowd at and around the polls at Savannah, rendering it somewhat difficult to get up to the polls to vote. It further appears that at this time all the loyal men in Andrew county between the proper military ages were enrolled as militiamen and that numbers of them were in the habit of wearing every day and when not on duty clothing that had been furnished them as militiamen, and that no military guard was stationed at the polls. It is also stated in the testimony that some persons in the county staid away and would not come to the polls to vote, alleging as a reason that they would not take an oath unknown to the Constitution and laws of the country, or, in other words, that they were disloyal and would not take the oath prescribed by the convention ordinance. Will contestant charge the loyal militia with depriving him of these votes?

The presumption is strong that no serious interruption of voters took place here, as Lieutenant Colonel Nash, the officer in command of the local militia here, does not appear to have been applied to by the judges of election to protect the polls, although he had previously notified them that he would do so if necessary, should they call upon him and desire it. The entire vote of this county in 1862 was 1,112. The aggregate vote for judges in 1863 was only 1,218, a difference of only 106 votes. The vote for President in 1860 was 1,912, of which Mr. Lincoln received 97, Breckinridge 319, Douglas 819, and Bell 677.

These facts and comparisons show the strength of the secession element here at the breaking out of the rebellion, together with the deaths, removals, and other changes in the voting population wrought in such a community by the war. This is strikingly illustrated in the depostion of Joseph B. Nickel, in his answers to questions twenty-one and twenty-two on his cross-examination, found on page 91 of the printed evidence:

"*Question* 21. Has there not, since the November election, in 1860, been a great many persons left the county of Andrew, who are supposed to have joined the rebel army; and has there not been a large number of men from Andrew county who joined the Federal army; and have not many persons moved away from Andrew county since November, 1860, and were not the men, generally speaking, who went to the said armies absent from Andrew county on the 4th day of November last?

"*Answer* 21. Since the November election in 1860, I think perhaps some four or five hundred men have left the county of Andrew, a part of whom are reported to have joined the rebel army, and a part of whom have joined the Federal army, and a part of whom have joined the State forces, and still another part of whom have removed from the county with their families. Of those who are reported to have joined the rebel army, I think a large majority of them have returned to the county; of those who joined the Federal army, I think perhaps half have returned; and of those who joined the State forces, comparatively few have returned. Of those who left the county with their families, their places mostly have been filled by others moving into this county from other counties and States. The most of those who moved into this county, referred to above, came here in the fall of 1861.

"*Question* 22. Does not the class of men who you think did not vote at said election, and who you think would, on a fair election, have voted for John P. Bruce, consist mainly of men who had returned from the rebel army, or had been arrested by military authority and imprisoned or put under bonds, or enrolled under Order No. 24, or were reputed to be secessionists or secession sympathizers?

"*Answer* 22. The men above referred to consist partly of men who uniformly call themselves Democrats, and many of whom have been arrested and imprisoned by the military authorities at some time since 1860; partly of men who had at one time been in the State or confederate army,

and some of whom are now under military bonds; and partly of those who are said to be enrolled under Order No. 24. Of the last, there were but few at Savannah, comparatively. All three of the above classes are, by the Republican party, called rebels and rebel sympathizers."

And is this by the contestant's own testimony the class of guerilla politicians whom he claims were hindered in the exercise of the elective franchise, or who would not come to the election to vote? I am glad that out in Missouri, where treason has culminated in open rebellion, the Union men have not hesitated to call things by their right names, and that they consider treason as something more of a crime than petit larceny. A man who has been a rebel, participating in this rebellion, or a rebel sympathizer giving it aid and comfort, has great reason to be thankful that his life is spared, and should properly be content, at least pending this war, to take a retired seat and allow his loyal fellow-citizens to do the voting. The treason of this class of men is not immediately effaced by their coming within loyal jurisdiction, and they have not any special claim to our sympathy in the matter of the exercise of the elective franchise, and it is the right and duty of the loyal men of Missouri to see to it that traitors during this war do not pollute the ballot-box with their votes, even if the State authorities, in order to accomplish this, have to place a militia guard around the polls.

I know that certain political gentlemen are anxious to have this class of men voting once more on their side, and are denouncing as Jacobins and radicals those earnest patriots in the border States who question the propriety or wisdom of such a course, and who insist that the national safety requires that such men should remain on probation while the war continues.

Until this war is ended these returned rebels, while enjoying the protection of the Government, will do their country the most essential service by quietly remaining at home on the day of election, and even postponing on that day all predatory excursions and guerilla raids. Clemency and liberality may safely be extended to them when hostilities are over and the rebellion is crushed, but until then let confidence and trust be reposed in the patriot in preference to the traitor, and let a marked distinction be drawn between a state of civil war and a state of peace in regard to the rights and privileges of disloyal citizens.

The contestant has produced no legal testimony as to the election in De Kalb county. The depositions he claims to have taken purport to have been taken before two justices of the peace, but without any notice or legal authority, and they are taken *ex parte*, no one appearing for the respondent or cross-examining any of the witnesses, and the respondent before the committee objected to the reception of the depositions as evidence in the case for the reasons already stated. The depositions are clearly illegal and inadmissible, being taken contrary to the act of Congress of February 19, 1851. There are eight election precincts in this county. The depositions only relate to one of these, namely, the Stewartsville precinct. The contestant, in asking his questions, and the witnesses, in giving their statements, wholly disregard the rules of evidence. Hearsay testimony is freely given and opinions or guesses of the witnesses are paraded as evidence; but if we were compelled to receive these depositions as in the case for the purposes of this investigation, we should find on examination that they could not be of any essential benefit to the contestant. Eight witnesses are sworn, of whom five did not go to the polls till in the evening, and could not have known how the election was conducted during the day. Only two men claim that they were actually prevented from voting by violence or intimidation, and that was in the evening. Three others of the witnesses claim that they were afraid to vote on this account, and on account of what they heard others say, and of these three, two of them did not go to the election till evening.

The general statements of witnesses that some of the soldiers were preventing men from voting if they wished to vote for contestant, without naming any persons so prevented, or specifying what the soldiers did to prevent them from voting, are of very little weight, especially where the deposition is *ex parte* and there is no benefit of a cross-examination and the witness is also a partisan. Statements of what third persons or strangers said during the day, either to the witnesses or in their hearing, are of very little consequence, and certainly are not evidence, and the same may be said of the opinions and surmises of witnesses so freely expressed in these depositions. There is no charge, however false and unfounded, but might be supported by such testimony in regard to an election.

The vote at Stewartsville is not given in the depositions, and the testimony which is offered does not show whether, in fact, the contestant or the respondent received a majority of the votes cast at this precinct. With what show of reason, then, can the contestant claim from his evidence that the result of the election was in the least affected to his injury by anything that transpired here.

The entire vote of the county of De Kalb for President in 1860 was only 702, of which Breckinridge received 213. The aggregate vote of the county for Congress in 1862 was 506, which, taking into account the secession vote before the rebellion, is certainly a pretty full vote for an ordinary election since the rebellion. The full vote in this county for judges in 1863, one year later, was only 601, being an increase of only 95 votes, notwithstanding it was an exciting election and a year of comparative peace had intervened.

It is worthy of remark also that by the deposition of Coy, one of the witnesses here produced by contestant, it is made to appear expressly that in 1863 there was no difficulty in voting at this precint, and that those whom he claims were refused in 1862 voted in 1863 without objection. We have seen how slight was the difference in the aggregate vote of these two years in this county, less than we should expect would have been the ordinary increase of votes in the county; and it is a fact conclusive that there was not any serious interference with voters here in 1862.

The testimony produced by the contestant in regard to the election in Buchanan county is all confined to Washington township. This township includes the city of St. Joseph, and had in it six voting precincts, known as Allen House, Nunning's Brewery, Market House, Court-House, Potter House, and Harness House. No evidence is given as to the election at the Harness House or the Potter House precinct, and only one witness testifies about the election at Nunning's Brewery. No one is shown to have been prevented there from voting for contestant. Only two witnesses testify concerning the election at the Allen House precinct; and they do not show that any voters there were prevented from voting for contestant by either violence, threats, or intimidation; but one of these witnesses expressly negatives any violence, threats, or intimidation that day at that precinct. One man named Cowie appears to have been assailed after he had voted in the latter part of the day; but it was by an unarmed man, and no reason is given for the affray; and another man named McKesson, alleged to have been interfered with, had not offered to vote, nor does it appear what kind of tickets he had, nor that the interference had any reference to the contestant. This leaves but two precincts to be noticed, namely, the Court-House and the Market-House.

At the Court-House there is no question but that some of the citizens and soldiers, not on guard that day, but wearing the uniform of the militia, interfered and stopped the voting, and tore up the poll-books after about one hundred votes had been polled, a large portion of which, the witnesses think, were for contestant. This is the only instance in the district in which poll-books were destroyed and the election stopped for the day, and we are not disposed in the least to countenance or justify such proceedings. But it is proper to notice, when we consider the legal effect of this conduct as affecting the merits of this contest, that it appears by the testimony that the second board of judges of election acting at that precinct at that time, had been chosen and were acting without authority of law, and that neither the first nor the second board of judges of the election at that precinct, nor the clerks, had taken the oath prescribed or required by the convention ordinance, and therefore they were not legally authorized to preside at the election or to receive or count the votes, and no voting could legally have taken place there up to the ime when this interference closed the polls.

It also appears by the evidence and the laws of Missouri, that voters in this township of Washington could and did vote for Representative in Congress at any of the election precincts they saw fit, so that if the polls at the Court-House had been or were unlawfully closed, the voters were not thereby prevented from casting their votes for contestant at any of the other five election precincts in the township, which, so far as appears, all remained open during the day. Neglect of voters to vote after the closing of the polls at the Court-House would be a voluntary act, as it appears by the evidence that the polls of the different precincts were so near together in the city that a number of the witnesses frequently visited them during the day.

At the Market-House the evidence tends to show that about eleven o'clock in the morning there was some disturbance and the judges stopped the voting about half an hour and then resumed. Some five persons are named who it is claimed were prevented from voting, and some of the witnesses say in general terms that soldiers were in the crowd preventing voters who wished to vote for contestant from approaching the polls, and a few of the witnesses speak of seeing some persons arrested, but it appears that they were all shortly after and on the same day discharged from custody by order of General Hall. The military guards at the polls in this city were placed there at the request of the contestant made to General Hall, as his own witness testifies, and the same witness says he did not hear contestant's name mentioned in the crowd at the Market-House. Loomis, one witness, who claims that violence was here offered him, voted afterwards at Nunning's Brewery; but he admits that he got into an altercation with a man at the Market-House, and

called him a liar before he was put out of the room; and Abell, another witness, states that he had been enrolled as disloyal under Order No. 24; and Dr. Lamme, another witness, admits that he in the fall of 1861, proposed and gave three groans for the man who put up the national flag over the post-office in the city of St. Joseph. That this class of men to a considerable extent sympathized with and supported the contestant and of course were anxious for his success is also pointedly illustrated by the testimony of Mr. Matney, one of the contestant's witnesses at this place, who on his cross-examination was questioned and answered as follows:

"*Question.* As between Benjamin F. Loan, returned member, and John P. Bruce, contestant, who did that class of men, so far as you know or heard, who are generally denominated returned rebels, and men who have been arrested, taken the oath and given bond, and those returned from Price's army, and voluntarily surrendered themselves, and those enrolled under Order No. 24, as rebel sympathizers, vote for?

"*Answer.* I heard of a few men about the time of the election, who voted for Loan, of that class, but they were few and far between. My impression is that a majority of that class of men that did vote voted for John P. Bruce.

"*Question.* Where was General Loan, according to your best understanding, at the time the congressional canvass was going on in this district, and at the time the election was held?

"*Answer.* I understand him to be south of the Missouri river, with his head-quarters at Jefferson City.

"*Question.* Do you know how the voters that were dispersed, as you say, would have voted at the Court-House precinct, as between John P. Bruce and B. F. Loan? State your own knowledge in this respect.

"*Answer.* I do not know.

"*Question.* For whom did you vote at this election for Congress?

"*Answer.* I was under the necessity of voting for John P. Bruce, having no Democratic candidate to vote for."

In this connection we notice the fact that the contestant was not the Democratic candidate, and his claim that he had a right to expect the vote of the Democrtic party is purely gratuitous on his part. The three individuals running for Congress in this district at this time were all of them independent candidates, old party organizations having been broken up by the rebellion. Mr. Branch claimed to be the ultra radical candidate, while General Loan ran as an independent candidate of the Union men on a war platform. Being at that time actively engaged in the military service, the people of his district knew that his advocacy of the Government, his support of the war, and his adherence to the Union was no sham profession, but an earnest, living reality; and as he was not then in the district, and could not well come into it during the canvass, he issued the following card to his constituents, being all the address he made to them while the election was pending, and which was so issued just one month prior to the day of election:

"JEFFERSON CITY, *October* 4, 1864.

EDITOR HERALD: I have received many communications, public and private, from friends in the seventh district, asking permission to use my name as a candidate for Congress in that district. Official duties have deprived me of the pleasure of answering those requests as received, directly to the authors, and as it is not probable now that I shall have the time to do so hereafter, I will, with your permission, send through the medium of your paper, a brief answer to all of them. I have devoted my life to aid in suppressing this unholy rebellion, and from this work I do not propose, for any cause or consideration, to turn aside or to look back, until the last armed traitor is subjugated. I shall never consent to make any terms of peace or compromise with them, and the war must be continued until the traitors are coerced into making an unconditional submission to the Constitution and the laws. As a consequence of this determination, it will be utterly impossible for me to make a canvass before the people of the district, and have heretofore been disposed to refuse the requests of my friends to allow my name to be used in the race. But, upon reflection, if it is thought best to use my name as a means of uniting the whole strength of the unconditional Union party in the district, I do not feel at liberty to refuse it. I trust it in their hands.

Respectfully, BENJAMIN LOAN."

Nothing which he did was calculated in the least to hinder a fair and free election, nor did he have anything to do with any effort or attempt to prevent a free expression or choice of the legal voters at the polls. The contestant received at this Market-House precinct some 87 votes, or about one third of the vote cast for respondent, and it is apparent from the testimony that there was no organized or systematic attempt to prevent voters from voting for contestant.

But even admitting for the purposes of this investigation that there was some disturbance and interruption of voters at the polls, caused by persons in the crowd, and that some persons were roughly used, how much was the result of the election affected by it? Several of the witnesses give opinions from hearsay and from what they saw at the election in St. Joseph as to the number of persons they believed were kept from voting in the entire county, in which there are eighteen election precincts, but this is a mere wholesale guess, and is wholly inadmissible. Only two give estimates or guesses for this township. Knapp, on pages 7 and 9, puts the whole number kept from voting at about

three hundred, and Matney, on page 24, estimates the whole number at from one hundred and fifty to two hundred voters, but the witnesses would not swear that these would have voted for contestant. Yet the report of the majority of the committee claims a loss for contestant in this township alone of 900 votes by violence and intimidation, although contestant, in his notice, only claimed a loss of 800 in the whole county. The vote returned from this township for 1862 was 910. Add to this the 100 votes polled illegally at the Court House and destroyed, and it makes the entire vote cast 1,010. The whole vote of the township in 1863, one year later, and in an exciting party election, was only 1,556, being an increase of but 546 votes, of which increase the radical candidates for supreme court judges in 1863 gained 186 votes over the vote for the respondent in 1862, his vote in 1862 being but 744, while that of the radical candidates for judges in 1863 was 930; which conclusively shows that the increased vote in 1863 did not come but in part from the conservative side.

The county of Buchanan in 1860 gave 614 votes for Breckinridge for President, of which 226 votes were cast in this same township of Washington. Did contestant expect to find the votes of these men deposited in the ballot-box at the election in 1862? Would he not be more likely to find these voters, and many others who voted there in 1860, in the rebel army?

But there is another fact which shows that no disturbance of a serious character or of long continuance occurred at the polls in this city of St. Joseph. General W. P. Hall, then Lieutenant Governor and also military commander of this district, resided here and attended the election on said day. He is now Governor of the State and a prominent Democrat, and has never been accused or suspected of radicalism. He had control of all the militia there, and discharged forthwith from custody all persons who were arrested that day, so that the voters could have no fears on that account, and could know that he was respected as in supreme command. Had there been any serious violence or disturbance he could have suppressed it at any moment. Will the Democracy endeavor now to impeach their own Governor in this matter, and claim that he connived at or even tolerated or permitted violent interference with voters at the polls either by the military or citizens under his own eyes?

That there was an interruption at the Court-House is admitted, but that was sudden and closed the polls where the election had been conducted in open violation of law, and there being five other polls open in the city, it was, it seems, not considered necessary to commence and open the polls there again; but it does not appear that contestant ever insisted before the canvassers or claimed that the vote cast at the Court-House was legal and should be counted in his favor.

No doubt at this Market-House precinct there were instances of high words, miscellaneous individual quarrels, and those scenes of noise and confusion which frequently attend upon elections where a crowd is in attendance and political feeling is excited; and in the recent experience of this country it would be strange if such manifestations did not appear; but that is far different from organized systematic violence, and intimidation or interference.

The contestant and the report of the majority of the committee, as well as that of the minority in this case, wholly exonerates the superior officers of both the State and Federal Government throughout the district from any action in the matter prejudicial to the contestant, and also admits that the judges of election conducted the election with fairness; and under such circumstances it is impossible for the contestant to make void the election, and to say that no choice has been made.

We have seen that the contestant's own witnesses only claim a loss of from 150 to 300 votes in Washington township. Suppose, for the sake of the illustration, we call it at the highest number, 300, and even add to this the entire 100 votes destroyed at the Court-House, but which were illegally cast, making 400 in all in this county, how is it to avail the contestant, and how is it possible for him with this aid to overcome the remaining surplus vote of the respondent in the district, amounting to over 1,628 majority or plurality? The gentleman who drew the report of the majority of the committee in this case seemed almost instinctively conscious of this insuperable difficulty, as he, while giving tabular statements in almost endless variety of repetition, wholly omits to give a statement drawn from the evidence of contestant's losses in the several counties, with the aggregate footing. In four of the counties where the number of precincts is shown by the testimony, there are forty-one election precincts, and outside of Buchanan county contestant does not claim to have offered any evidence as to the election only as to five precincts. It would, therefore, require proof that the contestant lost by violence or intimidation over 325 votes on an average at each of those five precincts to overcome and do away with the remaining majority of the sitting member. Such a state of things the

evidence wholly fails to show, and no political ciphering can enable the contestant to overcome the respondent's vote in the district.

Call the average of election precincts ten to a county, which is less than is shown by the evidence so far as given, and it makes one hundred and fifty precincts in the district, and the contestant having offered some evidence as to the election in only eight of these precincts, desires, on that alone, to set aside and declare the election void in the remaining one hundred and forty-two precincts in the district, concerning which he has offered no evidence, and in which the election is not in the least attacked or impeached. Neither law nor precedent will justify such a course.

As the contestant has sought to base an argument upon a comparison of votes in the district in different years we will notice that aspect of this case. The aggregate vote in this district in 1863 for judges of the supreme court was 16,229, and the majority for the radical candidates was 4,551, a majority lacking only 3 votes of being equal to contestant's entire vote in 1862, and the entire vote for the conservative candidates in 1863 in the district was only 5,839, being an increase in the entire district of only 1,288 votes over the vote for contestant in 1862, while the aggregate radical vote in the district in 1863 was 10,390, being an increase of 1,143 over the entire aggregate vote of Loan and Branch the two unconditional Union candidates in the district in 1862, thus showing that the gain in the radical vote in 1863 was nearly as great in the district as the gain in the conservative vote.

In the five counties of Andrew, Atchison, Buchanan, De Kalb and Livingston, concerning the election in which contestant claims to have offered some evidence, showing interference with and intimidation of voters at the polls in 1862, the majority for the radical candidates in 1863 was 795. Include with these the counties of Holt and Nodaway, in which contestant also insists there was interference (though he has offered no evidence to show any) in 1862, and the radical majority in 1863 was 1,742, showing a vote there about as healthy for radicalism in 1863 as in 1862, without allowing the contestant the poor excuse of attributing it in 1863 to military interference.

The contestant cannot explain what he calls the falling off in the aggregate vote in 1862, from the vote for President in 1860, by any alleged military or other interference with or against his supporters at the polls, but he will find himself compelled to devise some other and more rational explanation, if any is called for, as both parties are represented in such alleged decrease in 1862 as well as in the increased vote in 1863. But it is absurd to attempt to determine that there was any such actual falling off in the aggregate vote in 1862 by comparing it with the vote of 1860 before the rebellion, as that would be assuming that all the rebels in this district who voted in 1860 were to be reckoned as still voters here in 1862, and besides, the vote at an exciting presidential election is usually larger than at any ordinary State or congressional election. The secession element existing in this district at the breaking out of the rebellion, and the disturbances caused and changes wrought by the civil war, readily furnish the explanation without any necessity for taking the contestant or the military into serious consideration.

From certain portions of the testimony and also from the admissions and statements of the parties on the argument of this case before the committee, it appeared that at this election in 1862, being the first general election since the breaking out of the civil war in the State, owing to the strength of the disloyal element in the State and to the oath prescribed for voters by the convention ordinance, many persons refused or declined to vote, some because it would be acknowledging or recognizing their allegiance to the General Government, others because they were opposed to taking the convention oath; some because they were timid about taking sides with either party, and some because, since the issuing of Order No. 24, August 4, 1862, they had enrolled themselves as disloyal under said order. And during the continuance of the canvass such was the indifference of many citizens to the Federal and State government that candidates in conducting the canvass frequently urged their fellow-citizens to come out and vote and thus manifest their loyalty and take part in choosing county officers and members of the Legislature as well as members of Congress, and aid in restoring order and civil government. Some of the disloyal class as we have seen, more crafty, designing, and unscrupulous, boldly presented themselves at the polls, and their notorious disloyalty no doubt excited in the breasts of loyal men some righteous indignation and elicited expressions of disapprobation and epithets which would naturally disturb a guilty conscience, and might cause it to raise the howl of military interference at the polls.

These facts and circumstances, if any explanation were needed, would sufficiently account for any supposed falling off in the vote of this district in 1862 without attributing it to violence or intimidation on the part of the militia. But the vote was a large if not in fact a full vote. The aggregate vote for Congress in this district in 1862 was

larger than that of any other congressional district in the State of Missouri at that election, larger than the average aggregate vote for members of the present Congress in all the border States, and larger even than the average vote for Congress in the several districts of the State of Massachusetts at the last congressional election. The point has been made on behalf of contestant that in some of the counties many of the candidates for State offices were militia officers and were running on the same ticket with the respondent.

In reply to this, and also as to the frequent mention in the evidence of the presence of militia at the polls, we say, in the language of the order of the Adjutant General of the State, No. 45, "that the enrolled militia, being citizens of the State and nearly all entitled to vote, will doubtless be generally at places of voting;" and we are not aware that a loyal citizen is disqualified to hold a civil office by reason of being enrolled and serving in the State militia.

But the contestant cannot avail himself of anything to his advantage in this regard, for while making a profert in the committee-room of what he claimed to be the fragments of the poll-books and tickets destroyed at the Court-House in St. Joseph he exhibited a specimen of the tickets used at that election, on which his own name appeared for Congress, regularly printed on the same ticket with the same Colonel John Severance and the other military officers who were candidates for civil offices, and were voted for there at that election, showing that he ran on the same ticket with said military candidates in perfect harmony, and he cannot now deny his own acts, nor come before the House and claim that he was running in illegitimate company. In fact the congressional candidates ran on the different county tickets just as suited their pleasure and the locality, and it is but attempting to mislead when it is asserted or intimated that the contestant or respondent uniformly ran on opposing tickets with local candidates in each county.

It was also asserted on the argument and tacitly admitted before the committee, that although at this same election county officers and members of the Legislature were chosen, and had since entered upon and discharged the duties of their respective offices, yet in no instance had their seats been contested or the validity of the election been called in question. The people of Missouri have considered and treated this election as fair and legal. Returned rebels and men disloyal since December 17, 1861, were by the convention ordinance not entitled to vote, as they could not truthfully take the oath; and no man who had voluntarily enrolled himself as disloyal under Order No. 24, which was made August 2, 1862, could be considered a loyal man and entitled to vote at this election. Were it in evidence here that the election had been carried by the votes of such rebels and disloyal men, would not this House indignantly repudiate such votes and set aside such an election? And even were it shown that such returned rebels and disloyal men had been in some instances prevented by the militia from voting at this election, will not this House still hold that the result of the election has not been changed or affected thereby, as such men were neither loyal nor legal voters? Nor indeed should the act of a few riotous or quarrelsome individuals, not officers of election or in charge of the polls, be made effectual to vitiate an election, as it would be most unjust to the electors, and a great encouragement to the enemies of law and order, and would be placing in the hands of a few lawless persons the power of defeating at pleasure any election. But in this case neither the quality or quantity of the interference could legally have changed the result; and the officers of the election having, as contestant admits, conducted the election fairly and impartially, and no act of the superior State or military officers being complained of by him, we see nothing to defeat the choice made by the people.

In report No. 37 of the present session of Congress in regard to the Missouri militia, the Committee on Military Affairs, on the 29th day of March, 1864, in recounting the conditions of things in that State in the summer of 1862, made the following statement to this House, namely:

"That in the summer of 1862 the rebel General Price threatened an invasion of Missouri from Arkansas with a formidable army; that to co-operate with this, the rebel officers Coffee, Shelby, and Hughes had, with a large force, penetrated to the interior of the State, had defeated our forces at Lone Jack, captured Independence, and threatened Lexington; that the rebel officer Porter, in northeast Missouri, had collected over three thousand men in arms, and Poindexter, near the centre of the State, on the north side of the Missuri river, had over fifteen hundred rebels in arms, while a considerable force threatened the southeast; that to meet these bodies of the enemy there was no adequate Federal force in the State.

"Under these circumstances the commanding general in that department, with the consent of the Governor, organized and called into active service a large part of the militia of the State, and placed them under the command of the Federal officers. By their aid this outbreak was suppressed and the rebels driven from the State or captured.

"The militia in different sections of the State took prisoners and turned over to the Federal officers several thousand rebels, who were most of them sent South and exchanged. They were in many of

the engagements that occurred in different parts of the State, and are mentioned favorably by the officers in command.

"After the pressing emergency under which they were called into service had passed, the commander of the department would not consent to their being disbanded. He asked of the Governor that a part of them should be retained in service, assuring him that the State should be reimbursed for her expenses in paying them, and the Secretary of War in the mean time ordered that they should be subsisted and clothed by the Federal Government. By thus retaining the militia in service, the commander of the department was enabled to send ten thousand of the Federal troops in Missouri to Vicksburg, and subseqnently a considerable force to General Steele, to co-operate in the taking of Little Rock and holding possession of Arkansas."

Such is the class of militia men in Missouri who are attempted to be assailed by the contestant. These loyal citizen soldiers, even after having succeeded in driving out the rebel forces, found themselves still exposed, by the treachery and feigned loyalty of many of their neighbors and returned fellow-citizens, to fresh outbreaks, surprises and raids, and were compelled to seek means of self-protection and defense. They also found similar precautions necessary in regard to the holding of elections. Men fresh from or ripe for rebellion or guerrilla raids would, if permitted, have little scruple in taking an oath to enable them to deposit a vote in the ballot-box if thereby they could defeat some loyal supporter of the Government and elevate a rebel sympathizer to office in his stead, and if not permitted to do this would not hesitate to make an attack on the polls, and by violence wholly prevent or break up and defeat the election; and a wise and prudent precaution on the part of the loyal authorities would anticipate and provide for such emergencies. Hence the necessity and propriety, in those States thus affected by the rebellion, of the presence in many places of a loyal military guard at the polls, acting either under the authority of the State, or of the General Government.

The outcry about military interference at the elections which has of late been raised by political partisans, both in public harangues and through the public press, proclaiming the violation of the elective franchise and the subversion of our liberties, indicates a distrust of our citizen soldiery on the part of the opponents of the Administration which is unwarranted by the facts, which is unworthy an intelligent and patriotic people, and which is cruelly unjust to the great body of our loyal soldiers who are a part of ourselves, and who are not surpassed in intelligence, virtue, patriotism, and love of liberty and free institutions by any portion of our people, or by any class of citizens on the face of the earth. No one prizes higher the freedom of elections or the purity of the ballot box than they do, and it would be well if these croakers and complainers, these libelers of our soldiers, would manifest as strikingly as these veterans in the field have done their loyalty to their country and their desire to preserve and perpetuate her integrity and her free institutions.

English precedents and laws have frequently been referred to, and statutes of some of the States quoted, in regard to the presence of the military at elections, to show the jealous care with which our English ancestors and the people of the several States in this country have watched over the freedom of the ballot-box, and all this has been done with an evident desire to increase our alarm and to create a prejudice against our own citizens who are battling alike for their own and our protection, for the preservation of their own as well as our country, and her institutions. Let these politicians but create in the minds of our citizens who remain at home a distrust of their fellow-citizens who go forth from their midst to fight the battles of their country, let them but make these soldiers the objects of suspicion as a class separate and distinct from the people, as a class ready to become the instruments of tyranny in trampling upon the rights of their fellow-men, instead of being looked upon as a part and parcel of our people, loyal and patriotic, and devoted to the public welfare, and they will then have succeeded to a great degree in accomplishing the ruin of the country. Do gentlemen reflect upon the present state of things in our country? Do they realize who compose our volunteer armies? Do they remember at what class of men British legislation or the legislation of our own States in regard to protecting the ballot box, so far as the soldiery were concerned, was originally aimed?

We have no standing army of mercenaries against whose presence it is necessary for us to guard at the polls. It was this class of men, a class not strictly citizens, but a class separate and distinct from the great mass of the citizens and not in sympathy with them, of which our ancestors were jealous; a class whose characteristics one of the patriot orators of the Revolution, in an oration on the anniversary of the Boston massacre, has thus graphically described in speaking of standing armies and the presence of the British soldiery then quartered in Boston:

"Standing armies are sometimes (I would by no means say generally, much less universally) composed of persons who have rendered themselves unfit to live in civil society; who have no other motives of conduct than those which a desire of the present gratification of their passions suggests;

who have no property in any country; who have lost or given up their own liberties and envy those who enjoy liberty; who are equally indifferent to the glory of a George or a Louis; who for the addition of one penny a day to their wages would desert from the Christian cross and fight under the crescent of the Turkish sultan. From such men as these what has not a State to fear?"

Will gentlemen who are so loud in their complaints about military interference at the polls dare to insinuate any such charge against the brave and patriotic volunteers who now compose our armies? Will they dare to charge that these volunteers are in the least wanting in intelligence, in love of country, in respect for her institutions and laws, in regard for the purity and freedom of elections, and, above all, in an earnest desire to preserve, uphold, maintain, and perpetuate the Union? For my part I can conceive of no man who has demonstrated so unequivocally his patriotism and loyalty, who has shown so conclusively his appreciation of and love for his country and her institutions and his desire to uphold and maintain them, and who has become entitled to so much confidence and trust in the present emergency as the citizen soldier; and I would sooner intrust him with the entire charge of the polls, and with the control of the liberties of my country, than any of his traducers and slanderers who have remained at home, or any class of grumbling politicians who, being of the military age and able-bodied, have shrunk from their country's service in this her hour of peril.

Of our citizen soldiers we may say, in the words of the patriot just quoted:

"From a well-regulated militia we have nothing to fear; their interest is the same with that of the State. When our country is invaded, the militia are ready to appear in its defense; they march into the field with that fortitude which a consciousness of the justice of their cause inspires; they do not jeopard their lives for a master who considers them only as instruments of his ambition and whom they regard only as the daily dispenser of the scanty pittance of bread and water. No, they fight for their houses, their lands, for their wives, their children, for all who claim the tenderest names and are held dearest in their hearts; they fight *pro aris focis*, for their liberty; and for themselves, and for their God."

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